

Recommendations Relating To Post-Governmental Employment Provisions (“Revolving Door”) (Gov. Code Sec. Section 87407 et seq.) under the Political Reform Act

“Revolving Door” rules are unnecessarily complex and difficult for many officials and members of the public to understand. There are different, sometimes conflicting, rules for state, local and district officials. Moreover, the current rules, especially the one-year ban rules allow numerous exceptions that raise the issue of special access and influence. We make the following recommendations:

1. Seek legislation revising revolving door statutes to simplify rules and make the analysis consistent as applied to both state and local officials. Currently, *state officials* are subject to the one-year ban as applicable to certain types of appearances (i.e. legislative, administrative actions but not “quasi-judicial” actions) and the permanent ban, which is a lifetime ban prohibits an official from advising or representing any person, other than the State of California, for compensation in any judicial, quasi-judicial or other proceeding in which the official participated while in state service. Thus, a public official may never “switch sides” in a proceeding after leaving state service. High-ranking *local officials*¹ have a one-year ban that prohibits a paid appearance or communication made for the purpose of influencing administrative, legislative and quasi-judicial actions.² Air pollution control boards and air quality management districts have a one-year ban on paid appearances or communications to represent another person made before their district board or any officer or employee of the district for the purpose of influencing “regulatory action.” (Section 87406.1.)

- **One Set of Revolving Door Rules for all Local & State Officials.** Specifically, we propose a uniform set of revolving door rules (one-year ban and permanent ban) applicable to both local (including district & district boards) and state officials. Currently, there are separate statutes for local, state officials, and district and district board officials with differing, sometimes inconsistent requirements.
- **One Year Ban Applicable to All Appearances Before An Official’s Former Agency or Board:** In order to avoid even the appearance of any impropriety or special access, a strict one-year ban that applies to *all* appearances by state and local officials for compensation of a public official before his or her former agency (including “quasi-judicial”). This is similar to federal rules applicable to “senior employees” who are prohibited from contacts with their former agency for a period of one year after leaving federal employment regardless of whether the matter involves parties (quasi-judicial) or whether they previously worked on a matter. There would be exceptions for actions that are strictly ministerial in nature.³

¹ A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041. (87406.3.)

² “Quasi-Judicial” action means any proceeding that determines the rights of specific parties, or applies existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. (Regulation 18746.3. Revolving Door; Local Officials.)

³ Currently the one-year ban extends only to those communications for the purpose of influencing any legislative or administrative action, or influencing any discretionary act “involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.” (Section 87406(d)(1); Regulation 18746.1(b)(5).) This language is too narrow and allows compensated appearances that raise the issue of special

- **Permanent Ban Applicable to State & Local Officials who Participated in a Proceeding.**

Apply the current state permanent ban rule to all qualifying appearances by state and local officials for compensation.

- **Repeal Section 87406.1.** This section relates to post-governmental restrictions for “district and district boards.” This section applies special revolving door rules applicable only to air pollution control districts or air quality management districts, and governing bodies of an air pollution control district or air quality management district. This section applies a special one-year ban for district and district board officials only for compensated appearances for the purpose of influencing “regulatory action.” Officials of these districts should be subject to the same rules as local and state officials.

2. **Consider Making Revolving Door Rules Consistent With Other State Laws.** To the greatest extent possible, attempt to harmonize state revolving door rules with other state laws that apply similar restrictions on former state and local agency officials. For instance, we may want to consider a “*two-year ban*” instead of the current “*one-year ban*.” A number of state statutes outside the Act require a “*two-year ban*” on former state and local agency employees who wish to appear before their former agencies to represent another individual for compensation involving contracts, licenses, grants, sales of goods or property, or administrative or legislative action. Examples:

- *Gov. Code 31528* which applies to county retirement boards provides a *2-year ban* on certain individuals from representing for compensation any other person except a county, by making any formal or informal appearance or communication to the retirement system if the purpose is to influence administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.
- *Public Contract Code 10411* which prohibits a former state employee from entering into a contract “in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while employed in any capacity by any state agency or department.” The prohibition in Public Contract Code Section 10411(a) applies during the *two-year period* beginning on the date the person left state employment.

3. **Consider ideas from the federal rules.** Federal revolving door rules have a number of similar provisions to California’s revolving door rules. Federal rules prohibit influencing/negotiating prospective employment, includes a one-year ban or cooling off period for “senior employees,” and a two-year ban for “very senior employees,” as well as a permanent ban on “switching sides” for executive branch employees who worked on a matter involving parties such as a contract, grant or lawsuit, while a federal employee. The major difference with state law is the federal one-year ban for senior employees, or cooling off period, which essentially is a one-year ban on *all* lobbying contacts (with intent to influence official action) with an employee’s former agency. This is similar to the proposed changes articulated above with respect to the state one-year ban.

access, favoritism and influence. (i.e. State agency attorneys leaving state service and the next day appearing before their colleagues to represent clients in numerous “quasi-judicial” actions.)